

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

IN RE BANKAMERICA CORP.
SECURITIES LITIGATION,

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Case No. 4:99 MD 1264 CDP

MEMORANDUM AND ORDER

The NationsBank Classes await the final distribution of the remaining monies in the Net NationsBank Settlement Fund, which presently holds more than \$828,000. Of this sum, \$95,000 is reserved from distribution to account for potential awards of fees and costs to the Claims Administrator and Class Counsel. Any reserved monies that are not so awarded will be released to the Fund for distribution. Monies remaining in the Fund after final distribution to the class members may be distributed *cy pres*. But because the settlement funds are the property of the Classes, *cy pres* distribution is appropriate only upon exhaustion of all efforts to distribute the settlement proceeds to class members. *See In re BankAmerica Corp. Sec. Litig.*, 775 F.3d 1060, 1064 (8th Cir. 2015). Accordingly, any reserved funds remaining after the awards of fees and costs should be distributed to class members rather than become part of a *cy pres* distribution. I will therefore order the Claims Administrator and Class Counsel to apply for their respective fees and costs before final distribution so that any reserved funds

remaining after their awards can be released to the Distribution Fund and included in the final distribution to class members.

Accordingly,


IT IS HEREBY ORDERED that Class Counsel Frank H. Tomlinson shall have thirty (30) days from the date of this Order to apply to the Court for attorney's fees and expenses he incurred *in this action* as Class Counsel beginning January 5, 2021, in connection with the final distribution of the Net NationsBank Settlement Fund.¹ To assist the Court in determining what may be a reasonable fee and the appropriateness of any expense, any such application shall be accompanied by detailed records of hours reasonably expended as Class Counsel since January 5, 2021, and detailed explanations with documentation of reasonable expenses incurred as Class Counsel during the same period. Class Counsel's application may include a reasonable estimate of fees and costs he expects to incur in terminating the Fund after final distribution.

IT IS FURTHER ORDERED that Claims Administrator Heffler, Radetich & Saitta, LLP, shall have thirty (30) days from the date of this Order to apply to the Court for its fees and expenses incurred beginning March 26, 2021, in

¹ I already awarded Tomlinson reasonable fees and expenses for his work in this action through January 4, 2021. (See ECF 1041, Jan. 26, 2021, Order; ECF 1035-1, Jan. 4, 2021, Tomlinson Decl. at p.¶ 29.) I denied his requested fees and costs for work associated with a bankruptcy case and an appeal brought on behalf of Class Representative David P. Oetting. (ECF 1041.) Oetting's appeal was unsuccessful.

connection with Current Distribution 1 authorized by the Order of Distribution (ECF 1046) entered that same date. The Claims Administrator's application must be supported by appropriate documentation and may include a reasonable estimate of fees and expenses it expects to incur in connection with the upcoming final distribution, that is, Current Distribution 2.

IT IS FURTHER ORDERED that fulfillment of paragraph 4 of the Order of Distribution remains **STAYED** pending any awards of fees and expenses from the monies reserved from the Net NationsBank Settlement Fund.


CATHERINE D. PERRY
UNITED STATES DISTRICT JUDGE

Dated this 9th day of December, 2021.